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OFFICE OF PETITIONS

In re Application of :
Harry S. Sowden et al :
Application No. 10/743,364 : DECISION ON PETITION
Filed: December 22, 2003 :
Attorney Docket No. :
MCP0293-DIV2

This is a decision on the petition under 37 CFR 1.137(b), filed August 30, 2007, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before July 23, 2007, as required by the Notice of Allowance and Fee(s) Due (Notice), mailed April 23, 2007. A Notice of Abandonment was mailed on August 16, 2007.

The petition is accompanied by a Request for Continued Examination (RCE) under 37 CFR 1.114 and an Information Disclosure Statement. However, where an application became abandoned for failure to timely pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. See 35 U.S.C. § 41(a)(7) and 151 and MPEP 711.03(c)(II)(A)(1). Therefore, the filing of an RCE under 37 CFR 1.114 is not a proper reply under 37 CFR 1.137(a)(1) or (b)(1) in this case. In view of the authorization appearing in the petition, the \$1,400 issue fee, as well as the \$300 publication fee, will be charged to petitioner's deposit account.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) payment of the \$1,400 issue fee and \$300 for the publication fee, (2) the petition fee of \$1,500, and (3) an adequate statement of unintentional delay.

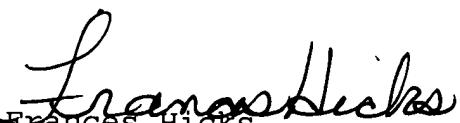
Accordingly, the failure to timely pay the issue and publication fees is accepted as being unintentionally delayed.

The rule at 37 CFR 1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." Since the statement appearing in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement is being construed as the required statement. Petitioner must notify the Office if this is not a correct reading of the statement appearing in the petition.

Petitioner is advised that the issue fee paid in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.¹

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218 or to the Office of Petitions Help Desk at (571) 272-3282 after January 3, 2008.

This application is being referred to Technology Center AU 1722 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the Information Disclosure Statement submitted with the petition.


Frances Hicks
Petitions Examiner
Office of Petitions

¹ The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B - Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Part B - Fee(s) Transmittal Form must be completed and timely submitted to avoid abandonment.